

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY-
LAW DIVISION-UNION COUNTY

DOCKET NO. UNN-L-3026-04,
consolidated with UNN-L-1650-

05

CIVIL ACTION

CONSENT JUDGMENT

This matter was jointly opened to the Court by the Acting Attorney General of New Jersey, John J. Hoffman, Deputy Attorney General Richard F. Engel appearing, and Allan Kanner, of Kanner & Whiteley, L.L.C., Special Counsel to the Attorney General, appearing, as attorneys for plaintiff New Jersey Department of Environmental Protection ("Plaintiff"), and Theodore V. Wells, Jr., of Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Marc A. Rollo, of Archer & Greiner, PC, appearing as attorneys for the defendant Exxon Mobil Corporation ("Settling Defendant"). These Parties have amicably resolved their dispute after a trial, subject to entry of this Consent Judgment.

I. BACKGROUND

A. The Plaintiff and the Administrator of the Spill Fund initiated this action in August 2004 by filing a Complaint against the Settling Defendant, and another defendant that was dismissed from the action before trial, in the Superior Court of New Jersey, Hudson County, Docket No. HUD-L-4415-04 (for the Bayonne Facility), and by filing a Complaint against the Settling Defendant in the Superior Court of New Jersey, Union County, Docket No. UNN-L-3026-04 (for the Bayway Facility), asserting claims pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through -23.24 ("Spill Act"), and the common law. These actions were removed to the United States District Court for the District of New Jersey, and given docket numbers 2:04-cv-04897 and 2:04-cv-04898 (DMC-MF), and were later remanded to the Superior Court of New Jersey and consolidated in Union County. After consolidation, the Hudson County action was given a new docket number of UNN-L-1650-05. The Administrator of the Spill Compensation Fund was later dismissed without prejudice from the actions.

B. The Plaintiff filed its most recent amended complaints relating to both Bayway and Bayonne in January 2009 (these consolidated actions are collectively referred to herein as "Complaint").

C. The Complaint seeks, among other requested relief, Cleanup and Removal Costs and Natural Resource Damages, allegedly incurred by the State as a result of alleged discharges of hazardous substances at and from the Bayway Facility and Bayonne Facility formerly owned and operated by ExxonMobil (the "Bayway and Bayonne Facilities").

D. Among the claims against the Settling Defendant for Cleanup and Removal Costs and Natural Resource Damages, were claims associated with several surface water bodies located in the vicinity of the former ExxonMobil Bayway and Bayonne Facilities. By Court Order, dated January 11, 2006, the Surface Water Claims against the Settling Defendant were bifurcated and stayed.

E. The Settling Defendant filed responsive pleadings in which it denied liability and asserted various defenses to the allegations contained in the Complaint.

F. The parties vigorously litigated the claims in this case, which included a lengthy discovery period and several appeals to the Appellate Division.

G. A trial was held before the Honorable Michael J. Hogan, J.S.C., Retired, on Recall, from January through September 2014. The Parties are entering into this Consent Judgment prior to the Court issuing a decision.

H. ExxonMobil has other alleged Natural Resource Damages liability in New Jersey associated with sites other than the Bayway and Bayonne Facilities. As part of this Consent Judgment, the Parties agree to resolve ExxonMobil's alleged Natural Resource Damages liability at other sites, subject to certain exceptions related to MTBE, as specifically stated herein.

I. The Parties to this Consent Judgment recognize and agree, and this Court by entering this Consent Judgment finds, that the Parties to this Consent Judgment have negotiated this Consent Judgment in good faith; that the implementation of this Consent Judgment will allow the Parties to this Consent Judgment to avoid continued, prolonged, and complicated appeals; and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action pursuant to the Spill Act and the common law. The Court also has personal jurisdiction over the Parties to this Consent

Judgment for the purposes of implementing this Consent Judgment and resolving the underlying Lawsuit.

2. The Parties to the Consent Judgment waive all objections and defenses they may have to the jurisdiction of this Court, or venue in this county. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

III. PARTIES BOUND

3. This Consent Judgment applies to, and is binding upon, the Plaintiff and DEP, as defined herein, and ExxonMobil and the Settling Defendant, as defined herein (each, a "Party" and collectively, the "Parties").

IV. DEFINITIONS

4. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act or in the regulations promulgated under the Spill Act shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply:

"Bayonne Facility" shall mean the former ExxonMobil facility and site located at, and including the real property of, 250 East 22nd Street, Bayonne, County of Hudson, New Jersey, those properties being known as Block 412, Lot 5; Block 416, Lot

3; Block 417, Lot 3; Block 418, Lots 1 through 4; Block 419, Lots 1, 3 and 4; Block 427, Lot 3; Block 452.01, Lots 1 through 5; Block 452.02, Lots 4 through 7, 9, and 11; Block 453.01, Lots 1 through 11; Block 465, Lots 1 through 5, 8 and 9; Block 466, Lots 1 through 4; Block 477.01, Lots 1 and 3; Block 478, Lots 1 and 1.01; and Block 480, Lot 1; Block 481, Lots 3 and 4; Block 482, Lots 9 and 11; and Block 503, Lot 8 on the Tax Map of the City of Bayonne. The Bayonne Facility shall also include any properties in Bayonne currently or formerly owned or operated by ExxonMobil that were the subject of the Plaintiff's claims against ExxonMobil in the Lawsuit.

"Bayway Facility" shall mean the former ExxonMobil facility and site located at, and including the real property of, 1400 Park Avenue, Linden, County of Union, New Jersey, those properties being known as Block 515, Lot 1; Block 516, Lots 1, 1.02 and 2; Block 517, Lot 1; Block 518, Lots 1 and 2; Block 519, Lots 1 and 2; Block 520, Lots 1, 3, 4, 5, 6 and 8; Block 521, Lots 1 and 2; Block 522, Lot 1; Block 523, Lots 1 and 2; Block 524, Lots 9 and 24; Block 566, Lot 10; Block 568, Lot 10; Block 580, Lots 40, 42 and 47; Block 581, Lot 11-3 and 11.06; Block 586, Lots 3.01, 3.02, 5, 6, 17 and 18 on the Tax Map of the City of Linden; and Block 4, Lots 2.A and 2.B on the Tax Map of the City of Elizabeth. The Bayway Facility shall also include any properties in Elizabeth and Linden currently or

formerly owned or operated by ExxonMobil that were the subject of the Plaintiff's claims against ExxonMobil in the Lawsuit.

"Cleanup and Removal Costs" shall have the meaning ascribed to it in the Spill Act, N.J.S.A. 58:10-23.11b, and, to the extent not within the meaning ascribed under the Spill Act, and solely for the purposes of this Consent Judgment, shall also include direct and indirect costs recoverable under the WPCA and all costs of response as defined under 42 U.S.C. § 9601(25). Cleanup and Removal Costs shall not include Natural Resource Damages for the purposes of this Consent Judgment.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next Working Day.

"DEP" shall mean the New Jersey Department of Environmental Protection, its Commissioner, and the Administrator of the New Jersey Spill Compensation Fund, including any past, present or future natural resource damages trustee.

"ExxonMobil" shall mean the named defendant in the Lawsuit, Exxon Mobil Corporation, with a principal place of business at 5959 Las Colinas Boulevard, Irving Texas, and also includes Mobil Oil Company, and all of ExxonMobil's and Mobil Oil

Company's past and present subsidiaries, predecessors, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, past and present, whether named or unnamed in the Lawsuit. Also included is each "Related Entity," which is any of Exxon Mobil Corporation and Mobil Oil Company's future subsidiaries, successors, related and affiliated partnerships (if any) and corporations, joint ventures (if any), any and all other forms of business venture, divisions, affiliates, parent corporations, officers, employees, representatives, directors, partners, principals, general partners, limited partners, agents, stockholders (in their capacity as such), shareholders, owners, attorneys in fact, and attorneys at law, and each of its/their respective heirs, executors, insurers, personal representatives, administrators, beneficiaries, successors, trustees, successors and assigns, whether named or unnamed in the Lawsuit. A Related Entity shall be entitled to the

releases, covenants not to sue, and contribution protection, as set forth below, (i) only to the extent that the alleged liability of the Related Entity is based on its status and in its capacity as a Related Entity, and (ii) not to the extent that the alleged liability of the Related Entity arose independently of its status and capacity as a Related Entity. An affiliate means any company, partnership, limited liability company, association, joint venture, or other form of entity of which Exxon Mobil Corporation owns or controls, directly or indirectly, fifty percent (50%) or more of rights therein.

"ExxonMobil Retail Station" shall mean any gasoline service station in New Jersey that ExxonMobil owned, operated, or was branded Exxon or Mobil, or that ExxonMobil currently owns, operates, or is branded Exxon or Mobil.

"Lawsuit" shall mean the actions filed in the Superior Court of New Jersey, captioned New Jersey Department of Environmental Protection v. Exxon Mobil Corporation, Docket No. UNN-L-3026-04, consolidated with New Jersey Department of Environmental Protection, et al. v. Exxon Mobil Corp., Docket No. UNN-L-1650-05 (formerly docketed as HUD-L-4415-04 prior to consolidation with UNN-L-3026-04).

"Matters Addressed" shall mean ExxonMobil's alleged liabilities addressed in Paragraphs 7 through 10 of this Consent Judgment, summarized as follows: (1) all claims based on

discharges of contaminants prior to the Effective Date of this Consent Judgment that are the subject of the Lawsuit; (2) all NRD claims that were asserted or could have been asserted in the Lawsuit, as to any contaminant, media, and/or theory of liability, arising from ExxonMobil's activities at the Bayway and Bayonne Facilities, including all areas to which any discharged contaminant has migrated; (3) all NRD claims, as to any contaminant, media, and/or theory of liability, relating to ExxonMobil Retail Stations, including all areas to which any discharged contaminant has migrated, but excluding any claims relating to such stations where MTBE has been discharged prior to the Effective Date of this Consent Judgment; (4) all NRD claims relating to all ExxonMobil Retail Stations, including all areas to which any discharged contaminant has migrated, other than the claims alleged in the Statewide MTBE Litigation; (5) all NRD claims, as to any contaminant, media, and/or theory of liability, relating to all facilities listed on Attachment C to this Consent Judgment, including all areas to which any discharged contaminant has migrated, but excluding any claims relating to such facility listed on Attachment C where MTBE has been discharged; (6) all claims currently pending in New Jersey Department of Environmental Protection, et al. v. Exxon Mobil Corporation f/k/a GATX Terminals Corporation, Docket No. L-1063-

07 consolidated with L-0563, in the Superior Court of New Jersey, Gloucester County.

"Morses Creek" shall mean the physical limits of the creek bed only and shall exclude any adjoining or nearby wetlands, specifically the mudflats and pitch area, as depicted in the map appended as Attachment A.

"MTBE" shall mean methyl tertiary butyl ether, neat or as a part of gasoline or as a contaminant of other fuel, and the degradation byproducts of commercial grade MTBE, including tertiary butyl alcohol ("TBA"). In addition, MTBE shall include TBA when TBA is present in MTBE gasoline.

"Natural Resource Damages" and "NRD" shall mean all claims based on the discharge of contaminants or other activities that have occurred prior to the Effective Date of this Consent Judgment, known or unknown, that are recoverable by any New Jersey state natural resource trustee as damages for injuries to natural resources under: the Spill Act; the Water Pollution Control Act, N.J.S.A. 58:10A-1 through -43 ("WPCA"); the Oil Pollution Act, 33 U.S.C.A. sections 2701 through -2761; the Clean Water Act, 33 U.S.C.A. sections 1251 through -1387; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. sections 9601 through 9675 ("CERCLA"); or any other state or federal common law, statute, or regulation, for compensation for the restoration and/or replacement of, the lost

value of, injury to, or destruction of natural resources and natural resource services, including the costs of any Natural Resource Damages assessment, but do not include compliance with any statutory or regulatory requirement that is not within this definition of Natural Resource Damages.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper case letter.

"Plaintiff" shall mean the New Jersey Department of Environmental Protection.

"Section" shall mean a portion of this Consent Judgment identified by a roman numeral.

"Settling Defendant" shall mean Exxon Mobil Corporation.

"State" shall mean the State of New Jersey.

"Statewide MTBE Litigation" shall mean the lawsuit captioned NJDEP v. Atlantic Richfield Company, et al., Case No. 08 Civ. 00312, Master File No. 1:00-1898, MDL 1358 (SAS) (SDNY), including any additional caption the case might have if it is remanded to any other court, including, but not limited to, the United States District Court for the District of New Jersey or the New Jersey Superior Court.

"Surface Water Claims" shall mean NRD claims as currently stayed in the Lawsuit pursuant to the Court Order dated January 11, 2006, appended as Attachment B.

V. SETTLING DEFENDANT'S COMMITMENTS

5. Within 45 Days after the Effective Date, as defined in Paragraph 32 of this Consent Judgment, Settling Defendant shall pay the Plaintiff \$225 million by certified check made payable to "Treasurer, State of New Jersey," or by wire transfer pursuant to instructions provided by the Plaintiff. The Plaintiff shall place that money in a segregated account within the Hazardous Discharge Site Cleanup Fund (the "Account"). Until this Consent Judgment becomes final and non-appealable, the settlement funds in the Account shall earn interest and may not be used by the State of New Jersey for any purpose. In the event this Consent Judgment is not approved, or the approval thereof is overturned, remanded, vacated or modified on appeal such that the Consent Judgment is void and of no effect as provided by Paragraph 29 below, the settlement funds placed into the Account by the Settling Defendant shall be returned immediately and in full to the Settling Defendant, plus interest.

VI. DEP'S COVENANTS AND RELEASES

6. The releases, covenants not to sue and contribution protection contained in this Section VI shall take effect when ExxonMobil makes payment to the Plaintiff pursuant to Paragraph 5 above.

7. Except as provided in Paragraph 6 above, and Paragraph 8 below addressing the DEP's Surface Water Claims, DEP fully releases with prejudice, and covenants not to sue or take other judicial or administrative action against, ExxonMobil, and ExxonMobil receives contribution protection as set forth in Section X herein for all claims based on discharges of contaminants prior to the Effective Date of this Consent Judgment that are the subject of the Lawsuit, and all NRD claims asserted or could have been asserted in the Lawsuit, as to any contaminant, media, and/or theory of liability, arising from ExxonMobil's activities at the Bayway and Bayonne Facilities, including all areas to which any contaminants discharged at the Bayway and Bayonne Facilities have migrated. This release, covenant and contribution protection do not apply to any contaminants that were transported by any vehicle, pipeline or vessel from the Bayway and Bayonne Facilities. However, the release, covenant and contribution protection shall apply to any discharges prior to the Effective Date on site during such transportation.

8. Subject to Paragraph 6 above, the Surface Water Claims are dismissed without prejudice to the DEP's ability to assert those claims against ExxonMobil in a new, separate and future lawsuit, provided, however, that the DEP shall not bring any future

lawsuit for the Surface Water Claims until a formal Natural Resource Damages assessment for those surface waters has been completed by the applicable trustees under applicable Federal and State law or regulation and the trustees' determination of ExxonMobil's liability for Natural Resource Damages has been made pursuant to a procedure that allows for participation by ExxonMobil. In addition, any future lawsuit for the Surface Water Claims shall be a multi-defendant action involving other responsible parties. DEP shall have sole discretion to identify the direct defendants against whom it brings claims in any future lawsuit for the Surface Water Claims without prejudice to ExxonMobil's ability to bring third-party claims against any additional parties not named by DEP in the lawsuit. The intent of the Parties is that ExxonMobil will not be the sole defendant in any future lawsuit for the Surface Water Claims, nor will such a lawsuit focus solely upon the Bayway or Bayonne Facilities. ExxonMobil specifically waives any defenses to the DEP's refiling of the Surface Water Claims based on any statute of limitation or repose, laches, estoppel, waiver, entire controversy doctrine or other legal or equitable defenses based upon the running or expiration of any time period.

9. Subject to Paragraph 6 above, DEP fully releases with prejudice, and covenants not to sue or take other judicial or

administrative action against ExxonMobil, and ExxonMobil receives contribution protection as set forth in Section X herein, for all NRD, as to any contaminant, media, and/or theory of liability, relating to all ExxonMobil Retail Stations, excluding any claims involving any ExxonMobil Retail Station where MTBE has been discharged. With respect to any ExxonMobil Retail Station where MTBE has been discharged prior to the Effective Date of this Consent Judgment, the DEP covenants not to sue and ExxonMobil receives contribution protection for NRD claims other than what was alleged in the Statewide MTBE Litigation. ExxonMobil is not paying any NRD as part of this Consent Judgment for any ExxonMobil Retail Station where MTBE has been discharged, and ExxonMobil is not receiving a release at such stations. The releases, covenants, and contribution protection referred to in this Paragraph shall include areas as to which any contaminants, other than MTBE, discharged at an ExxonMobil Retail Station have migrated. The releases, covenants, and contribution protection do not apply to any contaminants that were transported by any vehicle, pipeline or vessel from any ExxonMobil Retail Station. However, the releases, covenants and contribution protection shall apply to any discharges before the Effective Date on site during such transportation, except where MTBE has been discharged at such ExxonMobil Retail Station. This Consent Judgment shall have no

impact upon or prejudice in any way whatsoever the claims against ExxonMobil as alleged in the Statewide MTBE Litigation, including but not limited to any impact on liability, evidentiary proofs, valuation of the claims, and damages, nor shall the Consent Judgment have any impact upon or prejudice in any way whatsoever ExxonMobil's defenses to such claims, as alleged in the Statewide MTBE Litigation, including but not limited to any impact on liability, evidentiary proofs, valuation of the claims, and damages. Specifically, ExxonMobil shall not use this Consent Judgment as an offset, credit, other reduction or to assert a double recovery against any claim as alleged in the Statewide MTBE Litigation.

10. Subject to Paragraph 6 above, DEP fully releases with prejudice, and covenants not to sue or take other judicial or administrative action against ExxonMobil, and ExxonMobil receives contribution protection as set forth in Section X herein, for all NRD, as to any contaminant, media, and/or theory of liability, relating to all facilities listed on Attachment C to this Consent Judgment, excluding any claims involving any facility listed on Attachment C where MTBE has been discharged. However, the releases, covenants, and contribution protection apply to the Former Paulsboro Terminal #3045 listed on Attachment C notwithstanding the release of any MTBE at that

site. With respect to any facility listed on Attachment C where MTBE has been discharged prior to the Effective Date of this Consent Judgment, the DEP covenants not to sue and ExxonMobil receives contribution protection for NRD claims other than what was alleged in the Statewide MTBE Litigation. ExxonMobil is not paying any NRD as part of this Consent Judgment for any facility listed on Attachment C where MTBE has been discharged, except the Former Paulsboro Terminal #3045 listed on Attachment C, and ExxonMobil is not receiving a release at such facilities, except the Former Paulsboro Terminal #3045 listed on Attachment C. The releases, covenants and contribution protection referred to in this Paragraph shall include areas as to which any contaminants, other than MTBE, discharged at the facilities listed on Attachment C have migrated. The releases, covenants and contribution protection do not apply to any contaminants that were transported by any vehicle, pipeline or vessel from any facility listed on Attachment C. However, the releases, covenants and contribution protection shall apply to any discharges before the Effective Date on site during such transportation, except where MTBE has been discharged at such facility listed on Attachment C, other than the Former Paulsboro Terminal #3045. This Consent Judgment shall have no impact upon or prejudice in any way whatsoever the DEP's claims against ExxonMobil as alleged in the Statewide MTBE Litigation,

including but not limited to any impact on liability, evidentiary proofs, valuation of the claims, and damages, nor shall the Consent Judgment have any impact upon or prejudice in any way whatsoever ExxonMobil's defenses to such claims, as alleged in the Statewide MTBE Litigation, including but not limited to any impact on liability, evidentiary proofs, valuation of the claims, and damages. Specifically, ExxonMobil shall not use this Consent Judgment as an offset, credit, other reduction or to assert a double recovery against any claim as alleged in the Statewide MTBE Litigation. DEP fully releases with prejudice, covenants not to sue or take other judicial or administrative action against ExxonMobil, and ExxonMobil receives contribution protection for all claims asserted or that could have been asserted in New Jersey Department of Environmental Protection, et al. v. Exxon Mobil Corporation f/k/a GATX Terminals Corporation, Docket No. L-1063-07 consolidated with L-0563-03, in the Superior Court of New Jersey, Gloucester County.

11. The releases, covenants and contribution protection contained in this Section VI extend only to ExxonMobil and not to any other person or entity.

12. The releases, covenants and contribution protection contained in this Section VI do not pertain to any matters other than those expressly stated.

13. Because Morses Creek receives process water discharges from the Bayway Refining Complex ("BRC"), and because of resulting operational conditions and restrictions at Morses Creek, the final remedy determination and remediation for Morses Creek, as depicted in Attachment A attached hereto, will be deferred until the cessation of refining operations at the BRC site, which will be when operational conditions at the BRC no longer require the regular discharge into Morses Creek of 30 million gallons per day or more of once-through non-contact cooling water pursuant to NJPDES Permit No. NJ0001511 (or as renewed/reissued). Notwithstanding this deferral, ExxonMobil will continue to timely comply with its permit and other regulatory obligations through the completion of the feasibility study for Morses Creek.

VII. RESERVATIONS

14. Each Party shall bear its own costs and expenses in the Lawsuit and in the case captioned New Jersey Department of Environmental Protection, et al. v. Exxon Mobil Corporation f/k/a GATX Terminals Corporation, Docket No. L-1063-07 consolidated with L-0563, in the Superior Court of New Jersey,

Gloucester County, including all claims for the costs of assessments, attorneys' fees, consultant or expert fees, interest or other Lawsuit expenses.

15. Except as expressly stated in Paragraph 13 above, this Consent Judgment shall not alter, suspend or otherwise impact any obligation of ExxonMobil to perform any investigation, response, or remediation relating to contamination at, under, beneath or emanating from any facility, site, or property, including but not limited to any obligation under any administrative consent order, permit, authorization, order, law, rule or regulation. Nor shall this Consent Judgment impact any rights ExxonMobil has under any administrative consent orders, permit, authorization, order, law, rule or regulation. The remediation referred to in this Paragraph does not include Natural Resource Damages.

16. The Plaintiff shall retain full authority and sole discretion to require ExxonMobil to take any action, or arrange for action to be taken, to address an immediate environmental concern, an imminent and substantial endangerment to public health, welfare or the environment, or an emergency response arising from or related to the Bayonne Facility, the Bayway Facility, any of the ExxonMobil Retail Stations, and any of the sites listed in Attachment C.

17. The Plaintiff reserves, and this Consent Judgment is without prejudice to, all rights against the Settling Defendant except those expressly released or for which there is a covenant not to sue in Section VI. This reservation of rights includes, but is not limited to, the following:

- a. claims based on Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;
- b. liability for future Cleanup and Removal Costs at the Bayway and Bayonne Facilities and the Former Paulsboro Terminal #3045 listed on Attachment C;
- c. liability for Cleanup and Removal Costs at sites other than the Bayway and Bayonne Facilities and the Former Paulsboro Terminal #3045 listed on Attachment C;
- d. liability for all claims paid by the Spill Fund concerning the discharge of hazardous substances for which the Settling Defendant is responsible under the statutes of New Jersey;
- e. criminal liability; and
- f. liability for any violation by the Settling Defendant of federal or state law that occurs after the Effective Date of this Consent Judgment.

VIII. SETTLING DEFENDANT'S COVENANT

18. The Settling Defendant covenants not to sue or assert any claim or cause of action against the State concerning the Matters Addressed, with the exception of the enforcement of the terms of this Consent Judgment.

19. The Settling Defendant's covenant in Paragraph 18 above does not apply where the State, including the DEP and any agencies or subdivisions of the State, sues or takes judicial, administrative, criminal or other action against ExxonMobil pursuant to Section VII above, nor shall this covenant impact or apply to ExxonMobil's ability to assert claims against the State, including the DEP and any agencies or subdivisions of the State, in the Statewide MTBE Litigation, in any future Surface Water Claims case against ExxonMobil, and/or in the remediation process.

IX. NO FINDINGS OR ADMISSIONS OF LIABILITY

20. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendant, or a finding by the DEP or this Court, of any wrongdoing or liability on the Settling Defendant's part.

X. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION

21. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment.

22. ExxonMobil expressly reserves all rights, including, but not limited to, any right to indemnification and contribution, defenses, claims, demands, and causes of action that ExxonMobil may have concerning any matter, transaction, or occurrence, whether or not arising out of the subject matter of the Complaint, against any person not a Party to this Consent Judgment. Further, the DEP agrees that it will not oppose any motion or application by ExxonMobil in any subsequent action in which ExxonMobil seeks the contribution protection that this Consent Judgment provides.

23. When entered, this Consent Judgment shall constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) and will resolve the entire liability of ExxonMobil to the DEP for the purpose of providing contribution protection to ExxonMobil from contribution actions under CERCLA, the Spill Act, the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1, et seq., the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 to -5.8 or any other statute, regulation or common law principle related to the

causes of action pleaded in the Complaint or Matters Addressed. The Parties agree, and by entering this Consent Judgment this Court finds, ExxonMobil is entitled, upon fully satisfying its payment obligation under this Consent Judgment, to protection from contribution actions to the fullest extent possible pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C.A. §§ 9613(f)(2), the Spill Act, N.J.S.A. 58:10-23.11f.a.(2)(b) and any other statute, regulation, or common law principle that provides contribution rights against ExxonMobil with regard to the subject matter of the Complaint or Matters Addressed in this Consent Judgment.

24. In accordance with N.J.S.A. 58:10-23.11e2, the Plaintiff published a copy of the draft Consent Judgment on Plaintiff's website, published notice of this Consent Judgment in the New Jersey Register, and arranged for notice, as described in the following paragraph, to other potentially responsible parties. Such notice included the following information:

- a. the caption of this case;
- b. the name of the Settling Defendant;
- c. a summary of the terms of this Consent Judgment; and
- d. that a copy of the draft Consent Judgment is available on the Plaintiff's website.

25. In fulfillment of N.J.S.A. 58:10-23.11e2 the Parties have provided written notice of this Consent Judgment to other potentially responsible parties by Settling Defendant publishing notice in the following newspapers:

- i. Asbury Park Press;
- ii. Atlantic City Press;
- iii. Bergen Record;
- iv. Burlington County Times;
- v. Courier News;
- vi. Courier Post;
- vii. Daily Journal;
- viii. Home News Tribune;
- ix. New Jersey Herald;
- x. South Jersey Times;
- xi. Star Ledger; and
- xii. Trenton Times; and

Plaintiff distributing a copy of the New Jersey Register Notice via the Site Remediation Program's listserv that the public can access at <http://nj.gov/dep/srp>. This notice is deemed compliant with the notice requirement of N.J.S.A. 58:10-23.11e2.

26. The Plaintiff will submit this Consent Judgment to the Court for entry pursuant to Paragraph 37 below unless, as a result of the notice of this Consent Judgment pursuant to

Paragraphs 24 and 25 above, the Plaintiff receives information that discloses facts or considerations that indicate to the Plaintiff, in its sole discretion, that the Consent Judgment is inappropriate, improper, or inadequate.

XI. GENERAL PROVISIONS

27. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J.

28. The DEP enters into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment.

29. All Sections, Paragraphs and provisions of this Consent Judgment (except headings and section titles) are integral to the Consent Judgment, and any Court Order that does not approve this Consent Judgment in its entirety or attempts to modify this Consent Judgment, except as to ministerial changes, shall cause this Consent Judgment to be void and of no effect, unless otherwise agreed in writing by the Parties.

30. This Consent Judgment shall be governed by the law of the State of New Jersey, without reference to choice of law principles.

31. This Consent Judgment shall not be used as evidence in any other litigation or future proceedings (including but not limited to the Statewide MTBE Litigation) other than in a proceeding to enforce the terms hereof, any other proceeding involving the contribution protection provided by this Consent Judgment, or in any contribution action brought by ExxonMobil.

XII. EFFECTIVE DATE

32. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XIII. RETENTION OF JURISDICTION

33. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling either of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate to effectuate or enforce compliance with its terms.

XIV. MODIFICATION

34. This Consent Judgment may only be modified by written agreement between the Parties with approval by the Court.

35. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce or approve modifications to this Consent Judgment.

XV. ENTRY OF THIS CONSENT JUDGMENT

36. The Settling Defendant has consented to the entry of this Consent Judgment without further notice after the comment period specified in Paragraphs 24 and 25 above.

37. Upon conclusion of the Plaintiff's review of any public comment received as a result of the notice described in Paragraphs 24 and 25 above, the Plaintiff shall promptly submit this Consent Judgment to the Court for entry.

38. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation among the Parties or third parties.

39. Within 30 days after the Plaintiff's receipt of payment as set forth in Section V above, Plaintiff will: (a) effectuate a dismissal of this Complaint with prejudice with the exception of those claims described in Paragraph 8 herein, which will be dismissed without prejudice; and (b) effectuate a dismissal of the Complaint with prejudice in the Superior Court of New

Jersey, Gloucester County, in the case captioned New Jersey Department of Environmental Protection, et al. v. Exxon Mobil Corporation f/k/a GATX Terminals Corporation, Docket No. L-1063-07 consolidated with L-0563-03.

XVI. SIGNATORIES/SERVICE

40. Each undersigned representative of the DEP and ExxonMobil certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such Party to this Consent Judgment.

41. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

42. The Parties agree that this Consent Judgment was negotiated fairly between the Parties at arm's length and that the final terms of this Consent Judgment shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Consent Judgment therefore should not be construed against either Party on the grounds that the Party drafted, or was more responsible for drafting, the provision(s).

SO ORDERED this day of , .

Michael J. Hogan, J.S.C.
Retired, On Recall

Subject to DEP and Court Approval

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION CONSENTS TO
THE FORM AND ENTRY OF THIS ORDER

By: _____

Dated: _____

Subject to DEP and Court Approval

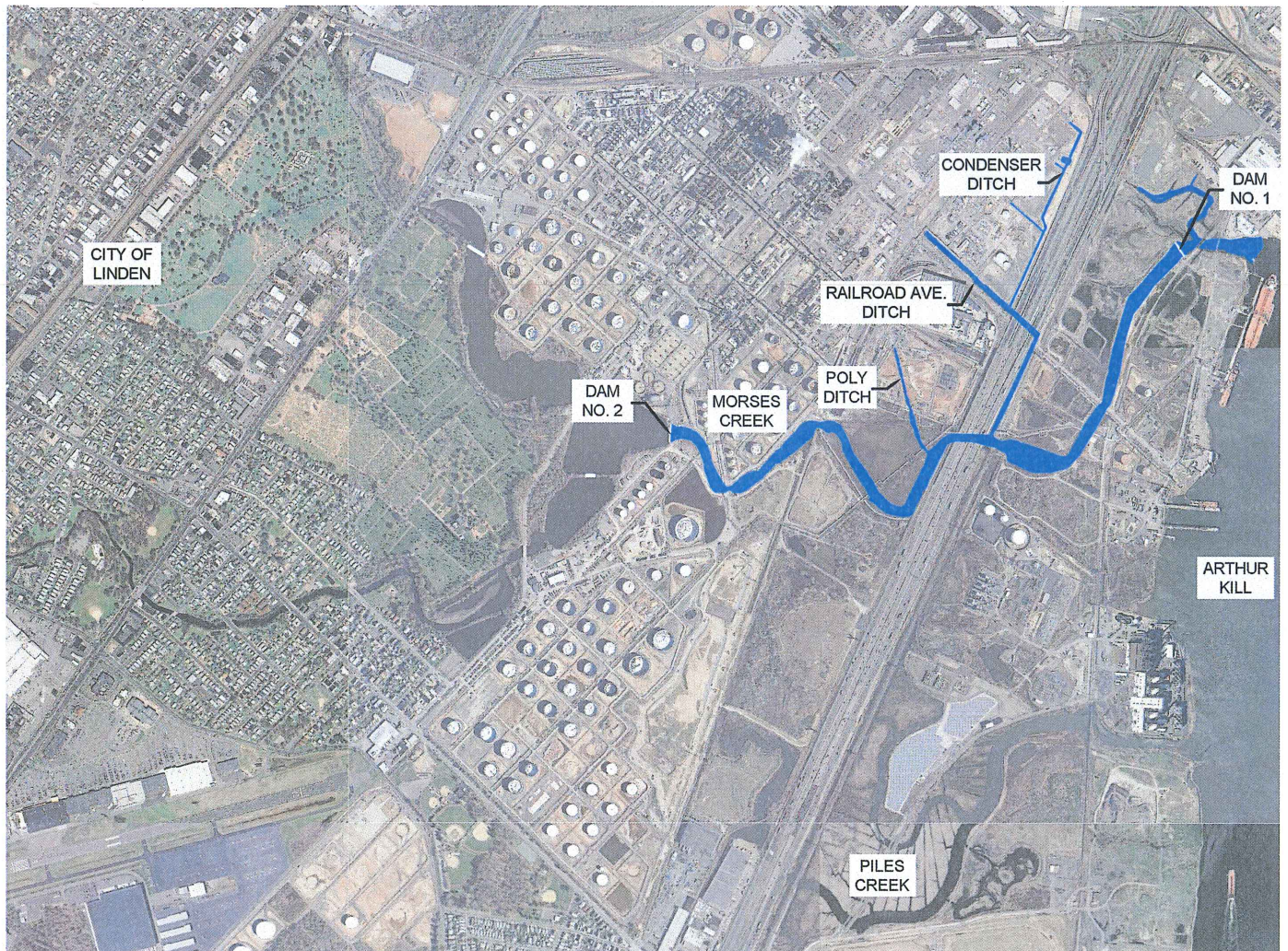
EXXON MOBIL CORPORATION CONSENTS TO THE FORM AND ENTRY OF THIS
ORDER

By: _____

Dated: _____

Subject to DEP and Court Approval

ATTACHMENT A



ATTACHMENT B

ARCHER & GREINER
A Professional Corporation
One Centennial Square
Haddonfield, NJ 08033-0968
(856) 795-2121
Attorneys for Defendant Exxon Mobil Corporation
BY: STEVEN J. FRAM, ESQUIRE

FILED

JAN 11 2006

ROSS R. ANZALDI, P.J.Cv.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
ADMINISTRATOR, NEW JERSEY SPILL
COMPENSATION FUND,

Plaintiffs,

vs.

EXXON MOBIL CORPORATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY

DOCKET NO. UNN-L-3026-04

Consolidated with
DOCKET NO. HUD-L-4415-04

Civil Action

CASE MANAGEMENT ORDER

THIS MATTER having come before the Court on the consents of the parties, counsel representing all parties having agreed jointly on how the Court should address certain case management matters, including the treatment of defendant's potential claims against certain third-parties which have not yet been joined in this action; and for good cause shown:

IT IS ON THIS 11 day of ~~December~~ ^{JANUARY}, 2006, **CONSENTED** to by the parties, through their undersigned counsel, and **ORDERED** by the Court as follows:

1. Plaintiffs have asserted claims against Defendant, Exxon Mobil Corporation ("ExxonMobil") for costs and damages, including natural resource damages, associated with several surface water bodies located in the vicinity of the former ExxonMobil Bayway and Bayonne refineries. The specific surface water bodies which are the subject of these claims include the Kill Van Kull, the Upper New York Bay, the Arthur Kill River, and the Rahway

River (hereinafter "Surface Water Bodies"). Hereinafter, the claims associated with the Surface Water Bodies, including all allegedly affected natural resources contained within them, will be known as the "Surface Water Claims".

2. Plaintiffs have asserted claims against ExxonMobil for costs and damages, including natural resource damages, relating to real properties which were formerly and/or currently owned by ExxonMobil. The properties which are the subject of these claims are the Bayway Refinery and the Bayonne Refinery and are more specifically described in Plaintiffs' Complaints in these matters. Hereinafter, the claims relating to these properties, including all allegedly affected natural resources contained within, shall be known as the "Property Claims."

3. It is not the intent of the parties to limit plaintiffs' claims otherwise associated with the Property or Surface Water based upon these descriptors.

4. As a result of discussions and agreements between the parties, the parties agree to a bifurcation and stay of the Surface Water Claims against ExxonMobil as detailed below.

5. With regard to the Property Claims, ExxonMobil shall file third-party claims within ninety (90) days of the date of this Order.

6. This agreement shall not be referred to or entered into evidence for any purpose.

7. This agreement is without prejudice to the rights of any party to conduct discovery related to the Surface Water Bodies prior to the trial on the Property Claims.

8. Without prejudice to the right of any party to conduct discovery, including the noticing of depositions, the depositions of the following individuals shall be scheduled by agreement of counsel and shall be completed by April 30, 2006:

a. the following current or former employees of Defendant: John Hannig, Donald Esch, Richard Harley; and

b. appropriate representatives of the following consultants of Defendant: Gradient and AMEC

9. The parties shall complete all fact and expert discovery with respect to the Property Claims by March 1, 2007.

10. As part of fact discovery, Plaintiffs and their experts may have access to either of the properties at issue in this litigation, for inspection and testing, upon reasonable notice to ExxonMobil, in compliance with established safety protocols, and with the supervision of appropriate representatives of ExxonMobil.

11. Plaintiffs shall serve their expert reports on the Property Claims no later than August 1, 2006. No later than June 1, 2006, Plaintiffs shall identify their experts on the Property Claims and, with respect to each expert, shall provide a current curriculum vitae and copies of all available publications, expert reports and deposition and trial testimony from other cases

12. ExxonMobil shall serve its expert reports on the Property Claims no later than January 31, 2007. No later than January 3, 2007, ExxonMobil shall identify its experts on the Property Claims and, with respect to each expert, shall provide a current curriculum vitae and copies of all available publications, expert reports and deposition and trial testimony from other cases.

13. Nothing in this Order shall preclude the filing, before the completion of discovery, of otherwise appropriate motions for partial summary judgment.

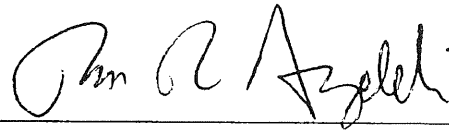
14. The Court will conduct a further Case Management Conference in this case on 8/3/06 at 2 P.M.

15. The Court shall conduct a ~~Pretrial~~ Conference pursuant to R. 4:25-1 with respect to the Property Claims on _____. Pre-trial memoranda of the parties in accordance with R. 4:25-2 and 4:25-3 shall be submitted no later than thirty (30) days before the date of the ~~Pretrial~~ Conference.

16. Trial on the Property Claims only shall proceed on _____.

17. The Court shall set deadlines for fact and expert discovery on the Surface Water claims at the conclusion of Trial on the Property Claims.

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "Ross R. Anzaldi", written over a horizontal line.

HONORABLE ROSS R. ANZALDI, J.S.C.

THE UNDERSIGNED CONSENT TO THE ENTRY OF THIS ORDER.

ARCHER & GREINER, P.C.
One Centennial Square
Haddonfield, NJ 08033
Attorneys for Exxon Mobil Corporation

By: 
STEVE J. FRAM, ESQUIRE

Date: Jan 9, 2006

ALLAN KANNER & ASSOCIATES, P.L.L.C.
Special Counsel to the Attorney General
701 Camp Street
New Orleans, LA 70130

By: 
ALLAN KANNER, ESQUIRE

Date: Jan 6, 2006

PETER HARVEY, ATTORNEY GENERAL
OF THE STATE OF NEW JERSEY

By: _____ Date: _____
RICHARD ENGEL, Deputy Attorney General

AKA#37213
2050988v1

THE UNDERSIGNED CONSENT TO THE ENTRY OF THIS ORDER.

ARCHER & GREINER, P.C.
One Centennial Square
Haddonfield, NJ 08033
Attorneys for Exxon Mobil Corporation

By: _____
STEVE J. FRAM, ESQUIRE


Date: _____

ALLAN KANNER & ASSOCIATES, P.L.L.C.
Special Counsel to the Attorney General
701 Camp Street
New Orleans, LA 70130

By: _____
ALLAN KANNER, ESQUIRE

Date: _____

PETER HARVEY, ATTORNEY GENERAL
OF THE STATE OF NEW JERSEY

By:  _____
RICHARD ENGEL, Deputy Attorney General

Date: 1/6/06

AKA#37213
2050988v1

ATTACHMENT C

NJEMS ID	Site	Address
144518	Atlantic City Terminal 98-ACP	2141 Absecon Blvd., Atlantic City
12799	Atlantic City Terminal #3001	New Jersey & Magellan Aves., Atlantic City
14340	Edison Research Lab	2195 Route 27, Edison
149606	Edison Synthetics Plant	2195 Route 27, Edison
14569	Flemington Terminal	198 Routes 202 & 31, Flemington
3834	Florham Park Facility	180 Park Ave., Florham Park
6520	Trenton Terminal #29005	2785 Lambertson Rd., Hamilton
14706	Linden Technical Center	1900 E. Linden Ave., Linden
971	Linden Terminal #29074	3700 S. Wood Ave., Linden
4493	Long Branch Terminal	160 West End Ave., Long Branch
3794	Morristown Municipal Airport Fuel Farm	8 Airport Rd., Morristown
63678	Paulsboro Terminal #3045	800 Billingsport Rd., Paulsboro
14544	Paulsboro Lube Plant #29004	1001 Billingsport Rd., Paulsboro
43331	Former Tomah Facility	32 Pennsgrove-Pedricktown Rd., Pedricktown
15824	Pennington Facility	311 Pennington-Rocky Hill Rd., Pennington
50155	Teterboro Airport Fuel Farm	Malcom Ave., Teterboro